

CLAIM OF FRANK TOKUHEI KAKU

[No. 146-35-21. Decided August 24, 1950]

FINDINGS OF FACT

This claim, in the amount of \$1,785, was received by the Attorney General on November 2, 1948. The claim was amended by a letter from the claimant dated December 14, 1949, which was received by the Attorney General on December 30, 1949. This letter did not affect or change the amount of the original claim, but merely specified three items of personal property, namely, a radio, a phonograph and some phonograph records which were not explicitly set out in the original claim. The claim involves the loss of an automobile and various items of restaurant equipment and supplies, including a stock of groceries. These items were used by claimant in a restaurant and chop suey business which he operated at 5714 Cherry Avenue, Long Beach, California. The claimant was born in Japan on July 14, 1877, of Japanese parents. At no time since December 7, 1941, has claimant gone to Japan. On December 7, 1941, and for some time previously, claimant actually resided at 4549 East Eugene Street, Los Angeles, California, and was living there on March 23, 1942, when he was evacuated under military orders, pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Manzanar Relocation Center, California. About 6 months before the evacuation, claimant had invested all his funds in a chop suey restaurant. He leased an empty store at 5714 Cherry Avenue, Long Beach, California, and began to operate a restaurant, but the war interrupted its progress. At the time claimant was evacuated he was unable to take any of the property involved in this claim with him. He at-

tempted to sell his car and the business, but could not find a purchaser for either who would pay him a fair price. He stored all the things which he could move in a garage in the rear of his house at 4549 East Eugene Street, Los Angeles, and left the heavier fixtures and equipment at the restaurant. The car was left at his residence. Upon his return to Los Angeles he found that the car and the other things which he had left at the restaurant and in the garage in the rear of his house had disappeared, and he has been unable to recover any of them. His loss has not been compensated for by insurance or in any other manner. His action in storing all the equipment which he could move and in leaving the remainder was reasonable, in view of the situation at the time of his evacuation. The fair value of the property at the time was \$956.57.

REASONS FOR DECISION

The evidence submitted by claimant in his sworn statement has been corroborated in part by investigation. The articles mentioned reasonably would have been owned by a person operating a chop suey restaurant. The fact that the business was of moderate size was confirmed by viewing the premises where the business had been conducted. The claimant could not find a buyer or buyers who would purchase his automobile and business at a fair price and in view of the unusual and trying circumstances of evacuation, he acted in a reasonable manner in storing his automobile and the property easily removable from his restaurant in a garage in the rear of his residence and in abandoning the heavier fixtures and equipment at the restaurant. Under California law such trade fixtures may be removed from the demised premises by the tenant during the continuance of his term, if the removal can be effected without injury to the premises, unless the thing has become an integral part of the premises. *Deering's Civil Code of California* (1949), § 1019. The evidence

does not indicate that any other obstacles than claimant's storage space and the physical handling barred his taking out the heavier fixtures. Physical inspection of the property involved in the claim could not be had, but a valuation of it at the time of the evacuation in the sum of \$956.57 is fair and reasonable. Loss in such circumstances through abandonment is allowable, and likewise loss through intervening factors. *Akiko Yagi, ante*, p. 11. Inasmuch as none of this property was ever recovered, claimant is entitled to receive the sum of \$956.57 under the above-mentioned Act, as compensation for loss of personal property as a reasonable and natural consequence of his evacuation.